

PART 5316--TYPES OF CONTRACTS

PART 5316--TYPES OF CONTRACTS

TABLE OF CONTENTS

| <u>Title</u> | <u>Paragraph</u> | <u>Page</u> |
|--|------------------|-------------|
| SUBPART 5316.2--FIXED-PRICE CONTRACTS | | |
| Fixed-price contracts with economic price adjustment..... | 5316.203 | 16-1 |
| Description..... | 5316.203-1 | 16-1 |
| Application..... | 5316.203-2 | 16-1 |
| Contract clauses..... | 5316.203-4 | 16-1 |
| Fixed-price contracts with prospective price redetermination..... | 5316.205 | 16-2 |
| Limitations..... | 5316.205-3 | 16-2 |
| Firm-fixed-price, level-of-effort term contracts..... | 5316.207 | 16-2 |
| Application..... | 5316.207-2 | 16-2 |
| Limitations..... | 5316.207-3 | 16-2 |
| Contract administration..... | 5316.207-90 | 16-2 |
| Payment procedures and economic price adjustments for fixed-price contracts using the cost index method of EPA..... | 5316.290 | 16-2 |
| SUBPART 5316.3--COST-REIMBURSEMENT CONTRACTS | | |
| Cost-plus-fixed-fee contracts..... | 5316.306 | 16-3 |
| SUBPART 5316.4--INCENTIVE CONTRACTS | | |
| Fixed-price incentive contracts..... | 5316.403 | 16-3 |
| SUBPART 5316.5--INDEFINITE-DELIVERY CONTRACTS | | |
| Decentralized Ordering..... | 5316.506-90 | 16-3 |
| SUBPART 5316.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS | | |
| Letter contracts..... | 5316.603 | 16-3 |
| Application..... | 5316.603-2 | 16-3 |
| SUBPART 5316.7--AGREEMENTS | | |
| Basic ordering agreements..... | 5316.703 | 16-3 |
| SUBPART 5316.90 TASK ORDER CONTRACTING | | |
| Scope of subpart..... | 5316.9000 | 16-4 |
| Definitions..... | 5316.9001 | 16-4 |
| Policies..... | 5316.9002 | 16-4 |
| Procedures..... | 5316.9003 | 16-4 |

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PART 5316--TYPES OF CONTRACTS

SUBPART 5316.2--FIXED-PRICE CONTRACTS**5316.203 Fixed-price contracts with economic price adjustment.****5316.203-1 Description.**

(c) Adjustments based upon cost indexes of labor or material. Recognized adjustments based upon cost indexes of labor and material are the abnormal escalation index method and the constant dollar index method.

(1) Under the abnormal escalation index method, the schedule price is based on all costs reasonably expected to be incurred during the scheduled period of performance considering economic trends that can be predicted with a reasonable degree of confidence. The price adjustment is determined by the difference between forecast and actual index values at the scheduled completion of performance, or at stated times.

(2) Under the constant dollar index method, the schedule price is expressed in base year dollars. The price adjustment is determined by the difference between base year index values and actual index values at the scheduled completion of performance, or at stated times. A constant dollar economic price adjustment (EPA) clause index method may be used only after it has been determined that the use of an abnormal escalation index method EPA clause would not be appropriate.

5316.203-2 Application.

Priced options are considered part of the period of contract performance when considering stability of market or labor conditions that will exist during an extended period of contract performance.

5316.203-4 Contract clauses.

(d) Adjustments based on cost indexes of labor or material.

(2) Air Force procedures for clause approval--

(i) Except as provided in (iv) below, all cost index method EPA clauses shall be approved by the chief of the contracting office.

(ii) Cost index EPA clauses will provide for price adjust-

ment only if the differences between the forecasted (for abnormal escalation clauses) or base year (for constant dollar clauses) index values and the actual index values exceed a predetermined threshold. This threshold will normally be established in terms of a percentage deviation from the forecasted or base year index values. The size of the threshold will be established on the basis of individual acquisition and economic conditions. However, appropriate considerations include minimizing administrative costs, avoiding adjustments for insignificant aberrations in the indexes, and providing for a reasonable assumption of risk by both the contractor and the government.

(iii)(A) When using the abnormal escalation index method, on contracts in excess of \$50,000,000, the clause shall provide that the contracting officer may adjust the contract value as result of the compounding effect that use of actual indices may have on the scheduled price for future periods. Any provisional adjustments made to future period costs shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

$$\text{Adjustment} = ((x-y)/y)[z] - s$$

where x = actual index

y = projected index

z = sum of dollars subject to adjustment for all periods in which a final adjustment has not been made

s = sum of unliquidated provisional adjustments

(B) For those EPA clauses which include a dead band in which no adjustment is made, the upper end of the dead band becomes the projected index value during times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) This requirement is optional for multinational con-

PART 5316--TYPES OF CONTRACTS

tracts where the impact of multiple country index recalculations are extremely complex.

(iv) Adjustments shall not be applied to the profit portion of the contract, except in the most extraordinary circumstances (see DFARS 216.203-4(d)(xi)). An EPA clause which provides for adjustment on profit shall not be used without the approval of ASAF(A). Submit approval requests to SAF/AQCP.

5316.205 Fixed-price contracts with prospective price redetermination.

5316.205-3 Limitations.

Solicitations contemplating the use of fixed-price contracts with prospective price redetermination shall be approved by SAF/AQC before issuance. Approval requests shall explain why alternate type contracts, such as, fixed-price-incentive (successive targets), are considered to be inappropriate.

5316.207 Firm-fixed-price, level-of-effort term contracts.

5316.207-2 Application.

The contracting officer shall insert in each firm-fixed-price level of effort (FFPLOE) contract of \$100,000 and over, a special provision that requires the contractor to maintain all necessary records of the actual level of effort provided and make such records available for inspection by the contracting officer or designee. Such inspection may be visual, by audit, or other reasonable means as deemed necessary by the contracting officer. Contracting officer's may include such special provisions in FFPLOE contracts under \$100,000.

5316.207-3 Limitations.

(a) A FFPLOE type contract shall not be used in acquisitions over \$100,000, unless other contract types are clearly not appropriate and the rationale for its use is included in the approval of the chief of the contracting office

(b) In no event may the following special price adjustment provisions be used with FFPLOE contracts without obtaining a deviation from FAR 16.207:

(1) Any provision which would adjust the contract price proportionally when actual hours (or other measure of time) expended differ from the number required by the contract; and

(2) Any provision which adjusts the initial definitive con-

tract price so that the final price paid is the total actual allowable cost plus a predetermined profit amount.

5316.207-90 Contract administration. The contracting officer shall request the administrative contracting officer to administer each FFPLOE contract as if it were a time-and-materials contract; except that the request need not be made on actions under \$100,000, if the contracting officer determines the circumstances of the acquisition do not justify additional surveillance and the contract file is so documented.

5316.290 Payment procedures and economic price adjustments for fixed-price contracts using the cost index method of EPA.

(a) Fixed-price incentive contracts.

(1) Normally within 30 days after actual index values required by the EPA clause become available, the contracting officer shall calculate the amount of the EPA, advise all interested parties, and initiate a supplemental agreement with the contractor to recognize the EPA, unless otherwise required by the EPA clause.

(2) The calculated EPA shall be applied to the contract target cost, contract target price and contract ceiling price as required by the EPA clause.

(3) The EPA and the incentive price revision (IPR) clauses shall operate independently. As such, price adjustments under the EPA clause will not require special actions to adjust billing prices. Billing prices shall be handled strictly in accordance with the Incentive Price Revision clause. However, despite the operative independence of these two clauses, a significant EPA may signal that the contractor's actual cost experience is also deviating significantly from target and that the adequacy of the current billing prices should be investigated. It may also be an indication that the alternate progress payment liquidation rate should be increased.

(4) In investigating the estimated actual cost at completion pursuant to the Incentive Price Revision clause, economic forecasts developed in connection with previous EPA analyses may be used as one of the factors considered in revising the estimated actual cost to complete projections. Because of the difficulty of separating inflationary effects from other factors involved in actual cost changes, all factors must be considered in arriving at a revised total cost projection upon which to base a change in billing prices/unit prices for payment purposes. If the estimated actual cost at completion is substantially greater than target cost, a change in billing price may be negotiated in accordance with the IPR clause.

PART 5316--TYPES OF CONTRACTS

(b) Firm-fixed-price contracts. Normally within 30 days after actual index values required by the EPA clause become available, the contracting officer shall calculate the amount of the EPA, advise all interested parties, and initiate a supplemental agreement with the contractor to recognize the EPA, unless otherwise required by the EPA clause.

SUBPART 5316.3—COST-REIMBURSEMENT CONTRACTS

5316.306 Cost-plus-fixed-fee contracts.

(c)(2) The contracting officer is the "designee" for signing determinations and findings establishing the basis for application of the statutory price or fee limitation.

SUBPART 5316.4--INCENTIVE CONTRACTS

5316.403 Fixed-price incentive contracts.

(d) Billing prices. When actual cost performance data is not directly reported to the contracting officer and the administrative contracting officer (ACO) has sufficient knowledge of such data, the contracting officer shall, whenever possible, delegate to the ACO authority to negotiate downward adjustments in billing prices (See FAR 42.302(b)(6)). Contracting officers shall retain the authority to negotiate upward adjustments in billing prices.

SUBPART 5316.5—INDEFINITE-DELIVERY CONTRACTS

5316.506-90 Decentralized ordering.

(a) For contracts that authorize decentralized ordering (i.e. ordering by a contracting office at any other location), the contracting officer with overall responsibility for the contract shall--

(1) Ensure that adequate control procedures are in place before any orders are authorized; and

(2) Exercise oversight of decentralized ordering throughout the period of performance under the contract to ensure that the procedures are followed.

(b) The control procedures shall ensure that ordering offices adhere to contract terms and conditions and prevent or identify any abuses, such as issuance of orders for items that are not covered in the basic contract. Control procedures should be tailored to the given circumstances. Generally, the control procedures should--

(1) Establish clearly defined line items;

(2) Place monetary limits on unpriced line items and other direct costs;

(3) Identify the contracting offices that are authorized to place orders and establish an aggregate order ceiling for each; and

(4) Require all decentralized orders to be submitted to the contractor through the contracting officer with overall responsibility for the contract. As an alternative, the responsible contracting officer may exercise control by issuing control numbers to each authorized ordering office. Control numbers may be transmitted by telephone or in writing. But, the ordering office must be required to submit a duplicate copy of each executed order to the responsible contracting officer.

(c) In exercising oversight, the responsible contracting officer shall--

(1) Review and track all orders placed under the contract to ensure that all items ordered are covered by the basic contract and that monetary limitations for each order and ordering office aggregates are not exceeded. The contracting officer shall not rely on status reports furnished by the contractor as the sole means of tracking orders; and

(2) Conduct periodic management reviews to identify and correct any process or ordering deficiencies.

SUBPART 5316.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

5316.603 Letter contracts.

5316.603-2 Application.

(c) See 5317.74 for policy and procedures pertaining to undefinitized contractual actions.

SUBPART 5316.7--AGREEMENTS

5316.703 Basic ordering agreements.

(c) Limitations. (1) Basic ordering agreements (BOA) shall not be used for the acquisition of major systems, major modifications, or major operation and maintenance (O&M) programs. This prohibition does not apply to orders for the repair of battle or crash damaged aircraft.

PART 5316--TYPES OF CONTRACTS

(2) To minimize the number of BOAs with an individual contractor, BOAs shall provide for the purchase of authorized supplies and services covering as wide a range as practicable. Separate BOAs may be negotiated when the pricing arrangement will be on other than a firm-fixed-price basis, when it is necessary to restrict the use of the BOA to the acquisition of specific supplies or services, or when it is necessary to authorize the administrative contracting officer to issue orders.

(3) An activity having a requirement for a BOA is responsible for assuring that a BOA has not already been issued which will satisfy its requirement.

(d) Orders. Each BOA shall include a provision that requires the contractor to submit a price proposal for any unpriced orders, normally within 30 days after receipt of the order, but no later than 60 days after receipt. If the contracting officer determines that a longer period is necessary, the contract file shall be so documented. See 5317.74 concerning undefinitized contractual actions.

SUBPART 5316.9 TASK ORDER CONTRACTING**5316.9000 Scope of subpart.**

This subpart prescribes Air Force policies and procedures for use of task order contracts to acquire nonpersonal services.

5316.9001 Definitions.

"Task order contract," as used in this subpart, means any contract which provides for the issuance of task orders. A task order contract must include—

(a) A statement of work that reasonably describes the general scope, nature, complexity and purpose of the services being procured; and

(b) Terms and conditions that define the contract period (including any options to continue performance) and the maximum dollar values of the services that may be ordered under the contract and under any options.

"Task order," as used in this subpart, means the formal contractual direction for a contractor to accomplish specific tasks under task order contracts. A task order may only be issued by a contracting officer and must be in writing and specify distinct and severable tasks that are within the scope of the contract. Each task order contains the schedule, period of performance, acceptance criteria, and an estimated or firm price. The task order may either define

the work to be performed or establish a required level of effort.

"Technical direction," as used in this subpart, means the advisory process by which the Contracting Officer's Technical Representative (COTR) provides clarification to a contractor for accomplishing work under a task order. Technical direction may be oral or in writing, but cannot, in itself, be contractually binding nor may it change the terms or conditions of the contract or a task order.

5316.9002 Policies.

(a) A task order contract may be used when—

(1) All or a portion of the tasks to be performed under the contract cannot be fully defined before contract award; and

(2) A general statement of work can be prepared and the scope and duration of the effort adequately described so that potential offerors can submit responsive offers.

(b) Task order contracts shall not be used—

(1) To establish a contract type that is not described in FAR Part 16;

(2) To circumvent the requirements of the Competition in Contracting Act (CICA) as implemented under FAR Part 6;

(3) As a substitute for fully defining and pricing contract requirements or options prior to contract award, when it is feasible to do so; or

(4) When the definition of tasks that may be performed is excessively broad or lacking specific minimum work requirements.

(c) Task orders may not be used to increase the scope, period of performance or maximum dollar value of the basic contract. Such changes shall be made only by modifying the contract after obtaining appropriate justifications and approvals. Changes to individual task orders may be made by modification to the task order or by issuance of a new task order, as appropriate.

5316.9003 Procedures.

(a) When preparing solicitations and contracts that provide for the issuance of task orders, the contracting officer shall—

PART 5316--TYPES OF CONTRACTS

(1) Issue all requests for proposals and all requests for contractor estimates, conduct all discussions with the contractor, and issue any changes to solicitations or contracts;

(2) Include in the solicitation the criteria for evaluating costs, prices, rates and other factors directly relating to the offeror's ability to provide the services and level of quality;

(3) When two or more task order contracts will be awarded, specify in the solicitation and contracts procedures by which individual task orders will be negotiated and either competed among or equitably allocated among the contractors.

(4) Include in Section H, Special Contract Requirements, a clause stating that performance cannot be authorized except by a task order issued by the contracting officer. The clause should also identify the officials (e.g. the COTRs) authorized to provide technical direction to the contractor and state that personnel providing technical direction do not have authority to direct a contractor in any manner which would change contract requirements; and

(5) Make notice of award as required by FAR 5.301 and announcement of contract award as required by AFFARS 5305.303-90(a) for initial award; however, notice and announcement of individual task orders is not required.

(b) When issuing individual task orders, the contracting officer shall—

(1) Issue each task order under a separate contract line item or subline item;

(2) Ensure all task orders and changes to a task order are within the scope of the contract with assistance of the local legal counsel and Competition Advocate;

(3) Before issuing a task order or a change to a task order that exceeds the simplified acquisition threshold, obtain coordination of the local Competition Advocate;

(4) Ensure each task order is written to avoid establishing a personal services relationship between contractor and Government personnel;

(5) In cost reimbursement task orders, establish in the task order or contract a maximum fee that can be earned to avoid a cost-plus-percentage-of-cost arrangement;

(6) Obtain technical and cost analyses needed to establish the fairness and reasonableness of the cost or pricing

(including, where appropriate, verification of the rates and factors used for pricing and billing); and

(7) Use the DD Form 1155, establishing a unique serial number and referencing the contract line item or subline item under which the order is being placed.

(c) During performance of a task order contract, the contracting officer shall—

(1) Establish procedures for users to request the issuance, award, or modification of a task order;

(2) Track the total of awards by Accounting Classification Reference Numbers (ACRN) and periodically review these to ensure the overall contract funding status or obligation/expenditure levels are appropriate for the contract; and

(3) Monitor contractor performance to ensure the required services (i.e. labor mix and type of effort) are being provided.

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